DIBENA ENTERPRISE SDN BHD v. HUAWEI TECHNOLOGIES (M) SDN BHD & ORS

HIGH COURT MALAYA, KUALA LUMPUR
MOHAMAD ARIFF YUSOF JCA
[SUIT NO: D-22NCC-71-2011]
20 JANUARY 2015

PARTNERSHIP: *Existence of partnership – Dispute – Whether partnership existed by virtue of letters of undertaking – Whether letters of undertaking forged document – Validity of signature on letters of undertaking – Whether forged – Whether letter of undertaking constituted a commission document – Whether signatory of letter of undertaking had authority, actual or ostensible to create a partnership agreement*

EVIDENCE: *Expert evidence – Signature – Forgery – Whether signature on letters of undertaking forged – Chinese script – Accuracy – Whether expert witness must know Chinese language and Chinese script*

This suit was instituted by the plaintiff ('Dibena') initially against the first defendant ('Huawei Malaysia'). Huawei Malaysia was a locally incorporated and a registered MSC status company that was in the business of 'Telecom Solutions Provider'. The second defendant ('Telekom Malaysia') applied to intervene in the proceedings because the claims made by the plaintiff against Huawei Malaysia was on the basis of a partnership agreement connected with "Telekom Malaysia Next Generation-Network Project" ('NGN Project') awarded to Huawei Malaysia and the third defendants ('Huawei Tech') under a contract with Telekom Malaysia. Dibena's claim was that a partnership existed between Dibena and Huawei Malaysia by virtue of Huawei Malaysia's letters to Dibena dated 3 August 2007 and 12 February 2008 ('the said letters') in respect of the NGN Project purportedly signed by one Chang Jijun in the capacity of 'deputy country manager' of Huawei Malaysia. It was also argued that Chan Jijun also executed four loan agreements ('loan agreements') in that capacity by which Dibena loaned a total sum of RM1 million to Chan Jijun in his personal capacity. The matter that arose during the trial was whether the said letters were forged documents. According to Dibena, pursuant to the said partnership, it had assisted Huawei Malaysia to secure the said NGN Project and in response, Huawei Malaysia undertook to pay Dibena a fee totalling 5% of the total equipment cost. Dibena's pleaded case was wholly based on the existence and breach of the said partnership agreement. An unpleaded ground had also been pursued by Dibena *ie*, that the said partnership agreement was a commission agreement whereby the 5% was an agreed commission tagged on the equipment supply. The said letters had been admitted as exhibits on the basis of being original documents. Huawei Malaysia, however, submitted that the said letters were non-existent in their records and/or that the said letters were forged and/or fraudulent. Huawei Malaysia contended that Chan Jijun was only Huawei

Malaysia's 'Technical Branding Advisor' who had no authority to sign the said letters which bound Huawei Malaysia to their contractual terms. Since Chan Jijun could not be traced, Huawei Malaysia adduced four handwriting experts to establish that the said letters were in fact not signed by Chan Jijun. The loan agreements were accepted as genuine documents and were sample documents used by the handwriting experts when assessing whether the signatures in the said letters had been forged. Dibena called one Mr Harcharan Singh Tara ('PW5') and according to PW5, the questioned signatures had common authorship. On the contrary, Huawei Malaysia's four handwriting experts offered differing opinion and were critical of PW5's opinion since he had no knowledge of the Chinese language and the Chinese script. All the four experts of Huawei Malaysia stated that the questioned signatures were probably forged. Dibena, however, argued that the copies of the disputed and specimen signatures had been taken from the government chemist surreptitiously and without their knowledge, therefore, it was argued that there was a break in the chain of evidence which caused the veracity of the documents to be called into question. The issues that arose for determination *inter alia* were (i) whether the said letters were forged; (ii) if the said letters were not forged, whether Chang Jijun had the authority from Huawei Malaysia to sign the said letters, which made Huawei Malaysia bound by the said letters; (iii) if Chang Jijun had the authority, actual and ostensible, whether these letters were in the nature of a partnership agreement, or simply as a commission agreement.

Held (dismissing plaintiff's claim with costs):

(1) In a criminal prosecution, a break in the chain of evidence would defeat the prosecution's case. In a civil case, however, the burden cast was not on a standard of proof beyond reasonable doubt. When it comes to giving expert evidence on the Chinese script, the witness must know the Chinese language and the Chinese script. Otherwise, there would be a risk of major errors in evaluating the challenged as against the specimen signatures. (paras 31 & 33)

(2) The issue of whether a signature on a document has been forged is a question of fact and it is eminently a matter for the trial court to determine after considering the credibility of witnesses and taking into account expert evidence. A trial judge is not entitled to abdicate his function by allowing an expert to determine the question. Thus, an opinion by a handwriting expert who does not know the Chinese language when examining the signatures in the Chinese transcript needs to be considered in caution. As such, the opinion of PW5 should not be considered as accurate. (paras 34 & 35)

(3) Huawei Malaysia's four expert witnesses tend to support the allegation of forgery but provided varying opinions in support thereof. In total circumstances, the probabilities were against a finding that the

questioned signatures were forged. Therefore, on the facts, the probabilities were that Chang Jijun signed the said letters and absconded. (para 39)

(4) Witnesses for a party in a litigation in a court of law must realise that the court deals with evidence and not vitriol. The sooner this is appreciated the better for the contesting litigant. In assessing demeanour as against the contemporaneous documentary evidence, veracity of evidence can be easily destroyed by vitriolic outbursts of the witness. Thus, as between Dibena's witnesses and Huawei Malaysia's witnesses, the latter was more reliable and their evidence in the circumstances was truthful. To be charitable, Dibena's witnesses were most probably duped by Chan Jijun into believing that he was the deputy country manager. If so, this was a fraudulent misrepresentation by Chang Jijun. (paras 42 & 43)

(5) The overall evidence did not show that Chang Jijun was authorised to decide on the commission of 5% to be paid on the terms laid out in the said letters. There was therefore no issue of ostensible or apparent authority, let alone actual authority. In this circumstances, it was no answer for Dibena to rely on the rule on indoor management – *Turquand's* rule – that an outsider dealing with a company is not expected to be aware of the internal rules and operations of the company. (para 43)

(6) The general rule of company law does not operate where an illegality is perpetrated by a representative of the company or in the absence of any representation as to authority. Therefore, based on the evidence, the said two letters were signed by Chan Jijun without authority and unlawfully and thus Huawei Malaysia could not be bound by the terms of the said letters of undertaking. (para 43)

(7) On the absence of authority and the non-applicability of the general *Turquand's* rule on the facts, it was unnecessary to consider whether there was a partnership created independently of the said letters. If at all there was any commercial relationship, it would be a commission agreement. On the facts, principle, procedure and practice would militate against the exercise of the court's discretion to allow an unpleaded ground just because it had been raised in the course of the trial and both parties had submitted on it. (para 47)

Case(s) referred to:

Chew Hock San & Ors v. Connaught Housing Development Sdn Bhd & Another Case [1985] 1 CLJ 533; [1985] CLJ (Rep) 64 FC ***(refd)***

Dr Lo Sook Ling Adela v. Au Mei Yin Chistina & Anor [2002] 1 SLR 408 CA ***(refd)***

Dr Shanmuganathan v. Periasamy Sithambaram Pillai [1997] 2 CLJ 153 FC ***(refd)***

Freeman and Lockyer (a firm) v. Buckhurst Park Properties (Mangal) Ltd [1964] 2 QB 480 ***(refd)***

Majuikan Sdn Bhd v. Barclays Bank Plc [2014] 9 CLJ 337 CA ***(refd)***
Nina Kung v. Wong Din Shin [2005] 8 HKCFAR 387 ***(refd)***
PB Malaysia Sdn Bhd v. Samudra (M) Sdn Bhd [2008] 1 LNS 679 HC ***(refd)***
Saeng-Un Udom v. PP [2001] 3 SLR 1 CA ***(refd)***
United Asian Bank Bhd v. Tai Soon Heng Construction Sdn Bhd [1993] 2 CLJ 31 SC ***(refd)***

For the plaintiff - Abu Bakar As-Sidek (Wan Muhammad Amin Wan Yahya & Galoh Nursafinas Samsudin with him); M/s Abu Bakar As-Sidek
For the 1st defendant - James Ee (Nur Amalina Haris with him); M/s KF EE & Co
For the 2nd defendant - Jeyakumar Palakrishnar (Nur Hidayah Saidi with him); M/s Zahir Jeya & Zainal

Reported by Sandra Gabriel

JUDGMENT

Mohamad Ariff Yusof JCA:

Introduction

The Parties

[1] This suit has been instituted by the plaintiff, Dibena Enterprise Sdn Bhd ("Dibena"), a local Malaysian company which provides, according to its pleadings, "services of smartcard personalisation, integrated security systems, systems integration and customised application development, turnkey project management and consultancy services", initially against only the first defendant, Huawei Technologies (Malaysia) Sdn Bhd ("Huawei Malaysia") for breach of an alleged partnership agreement between these two parties. The second defendant, Telekom Malaysia Berhad ("Telekom") then applied successfully to intervene in these proceedings and be added as the second defendant. The third defendant, Huawei Tech Investment Co Ltd, a company incorporated in Hong Kong ("Huawei Hong Kong"), was added as the third defendant in the course of the trial, but the plaintiff has not served the writ and the statement of claim on Huawei Hong Kong, and therefore Huawei Hong Kong has not been represented nor appeared in the trial. The writ for service out of the jurisdiction has expired. So, to all intent and purposes, only three parties are directly involved in this trial.

[2] Huawei Malaysia is locally incorporated and is a registered MSC Status Company that is in the business of a "telecom solutions provider". Huawei Malaysia is part of the large international conglomerate, the Huawei Group of Companies.

Telekom As Intervener

[3] Telekom has intervened in the proceedings because the claims made by the plaintiff against the first defendant on the basis of the alleged partnership agreement is connected with what has been described in these

proceedings as "Telekom Malaysia Next Generation - Network Project" ("NGN Project"), awarded to the first and third defendants under a contract with Telekom dated 4 May 2009. Telekom intervened, according to it, "in order to protect its proprietary, confidential and commercially sensitive information" included in this contract, the full title of which is "TM Contract for Establish (Consult, Plan, Design Build - Supply, Delivery, Installation, Testing, Commissioning - Integration, Interoperability, Migration and Decommissioning), Operate (Operation, Maintenance, Fulfilment and Assurance) and Transfer (Skill, Process and People) of TM's NGN NE System" ("TM contract").

[4] Huawei Malaysia and Huawei Hong Kong are described in the TM contract as "the contractor".

[5] Telekom has stated its position very clearly through counsel's written submission, and I quote:

> The 2nd defendant has no knowledge of the matters alluded by the plaintiff in respect of the alleged partnership between the plaintiff and the 1st defendant or the terms and conditions of the alleged partnership agreement nor any involvement with the contractual arrangements between the plaintiff and the 1st defendant, if any. The 2nd defendant would have avoided being embroiled in this civil action but was compelled to intervene in order to protect its commercial and proprietary information and defend its commercial integrity in the tender and award of the project known as the Telekom Malaysia Next Generation - Network Project which was carried out without the influence of the plaintiff or outsiders.

[6] This trial has taken the good part of 26 days during which thirteen witnesses have been called by the parties, with five witnesses for Dibena and seven for Huawei Malaysia. Telekom called just one witness. Five handwriting experts were called, one by Dibena and four by Huawei Malaysia. Despite the length of time taken, taken up in part mostly in testimony related to whether two critical letters are forged documents, the principal issues are relatively few, as reflected in Dibena's pleaded case, to which I now turn.

The Pleaded Case

[7] In paras. [3] to [6] of the statement of claim, Dibena avers:

> 3. The Plaintiff and the Defendant entered into a partnership agreement ... whereby the Plaintiff became the Defendant's partner for the Telekom Malaysia Next Generation Project ...
>
> 4. The written terms of the Partnership Agreement are evidenced by the Defendant's letters dated 3.8.2007 and 12.2.2008 ...
>
> 5. The Plaintiff will contend that its relationship with the Defendant is that of a partnership as defined and governed by the Partnership Act 1961.

A

6. The Plaintiff will further contend that:

a. The Defendant had and continues to have fiduciary duties arising from the Partnership Agreement;

b. That the Defendant had and continues to have a duty to act *uberrima fidei* towards the Plaintiff as a result of their partnership relationship;

B

c. The Defendant had arid continues to have a duty to account fully for all proceeds arising from the Project as a result of the partnership.

C **[8]** The terms of the partnership are pleaded as:

(a) Dibena undertook to use its best endeavours to assist Huawei Malaysia to secure the project; and

(b) Huawei Malaysia undertook to pay Dibena a fee totalling 5% of the total equipment cost based upon the following terms and conditions:

D

(i) payment was to be made progressively on a pro-rata basis, based on the pro-ration of the purchase orders received by Huawei Malaysia from Telekom over the total value of the equipment contract,

(ii) the fee of each purchase order was to be paid upon collection by Huawei Malaysia of the proceeds of the purchase orders from Telekom.

E

[9] Alluding to the performance by Dibena of its obligations under that alleged partnership agreement, Dibena avers it has "performed its obligations and responsibilities as agreed and as a result of which the project was awarded" to Huawei Malaysia. It adds further that Telekom was aware of Dibena's involvement in the NGN project, and that Dibena's partnership with Huawei Malaysia in the NGN project was crucial in order for Huawei to be awarded that project since Huawei was required to have "a strategic local partner" for the transfer of technology.

F

G

[10] Dibena alleges Huawei had breached its contractual obligations by failing to disclose the details of the purchase orders and the payments it had received from Telekom, and had failed to make payments to Dibena as required under the terms of the alleged partnership agreement. The reliefs prayed are pleaded in the statement of claim as:

H

(a) that the defendant be ordered to render a true and full account of all equipment contract purchase orders received by the plaintiff in respect of the project;

(b) that the defendant be ordered to render a true and full account of all monies paid by TM in respect of the equipment contract purchase orders in relation to the project;

I

(c) a declaration that the defendant holds 5% of all monies paid by TM in respect of the equipment contract purchase orders in relation to the project on trust for the plaintiff;

(d) that the defendant be ordered to pay 5% of all monies paid by TM in respect of the equipment contract purchase orders in relation to the project;

(e) that the defendant be ordered to pay interest at the rate of 8% on the total sum in respect of item (d) calculated from the date of judgment to the date of final payment;

(f) damages against the defendant for breach of partnership agreement to be assessed;

(g) damages against the defendant for breach of fiduciary duty to be assessed;

(h) interest at the rate of 8% on the sums referred to in items (f) and (g) calculated from the date of judgment to the data final payment;

(i) interest in items (d), (f) and (g) pursuant to section 11 of the Civil Law Act 1956, at a rate which this Honourable Court deems fit and calculated from the date the defendant received its first payment from TM to the date of judgment;

(j) such other or other relief which this Honourable Court deems just unfit to grant.

Undertaking Letters And Evidence Of Partnership Agreement

[11] It will be seen from the pleadings, Dibena's pleaded case is wholly based on the existence and breach of an alleged partnership agreement. In the submissions and in the course of the evidence, an alternative, unpleaded ground has been pursued by Dibena, ie, that the agreement is a commission agreement whereby the 5% is the agreed commission tagged on equipment supply. I will return to this ground in a separate section of this judgment later.

[12] The two crucial letters of 3 August 2007 and 12 February 2008 have been admitted as exhs. P1 and P4 on the basis these were original documents, leaving the issue of whether they were forged open. It was initially submitted by Huawei Malaysia that these two letters were nonexistent in their records. Subsequently, the defence was amended to include the averment of forgery and/or fraud. Both letter are allegedly signed by one Chang Jijun as "Deputy Country Manager" of Huawei Malaysia, whereas Chang Jijun was at the material times, only Huawei Malaysia's Technical Branding Advisor who would not have the authority to sign these letters binding Huawei Malaysia to their contractual terms.

[13] The exact terms of these letters are important to analyse. I start with the letter of 3 August 2007, which is addressed to Dato' Hanifah Noordin (PW1), the Executive Chairman of Dibena. Chang Jijun writes as Deputy Country Manager as follows:

A Dear Dato':

PARTNERSHIP IN IP CORE PROJECT AND NEXT GENERATION NETWORK (NGN) PROJECT

The above matter is referred.

B We are very grateful to work together with Dibena Enterprise Sdn Bhd (Dibena) as our strategic partner for the Establishment, Operation and Transfer (EOT) in the Telekom Malaysia Group (TMG) IP Core and NGN Project.

C Huawei Technologies is a world leader in providing next generation telecommunications networks for operators around the world which is committed to providing innovative and customised products, services and solutions to create long-term value and potential growth for its customers. Huawei has more than 60,000 employees, 48% of them are dedicated to R&D, 85% above is bachelor degree holder and 10% is PHD holder.

D Huawei's products are deployed in over 100 countries and serve 28% of the world's top 50 operators, as well as over one billion users worldwide.

Huawei has a lot of experience in handling EOT project in IP CORE and NGN project in China and overseas. We will give Dibena full support and backing to make the above projects great success. We also ensure technology transfer to Dibena and your local staff to assist you in the E future growth, both in Malaysia and overseas.

Thank you and best regards.

Yours sincerely,

HUAWEI TECHNOLOGIES (M) SDN BHD

F ...

(signed)

Chang Jijun
Deputy Country Manager

G **[14]** Whereas the letter of 3 August 2007 is in broad terms undertaking to give Dibena full support and backing to ensure the success of the IP Core and the NGN projects, the subsequent letter of 12 February 2008, also signed by Chan Jijun as Deputy Country Manager, is more explicit on terms and is headed as an "Undertaking Letter". I quote the contents:

H Attn: Dato' Hanifah Noordin, Executive Chairman

Dear Dato'

RE: UNDERTAKING LETTER TO PAY HANDLING CHARGES FOR TELEKOM MALAYSIA BERHAD (TM) BROADBAND REMOTE ACCESS SYSTEM AND NEXT GENERATION I NETWORK PROJECTS.

As you are aware, Huawei Technologies (Malaysia) Sdn Bhd (Huawei) is currently bidding for the above projects.

Vide our letter of 3 August 2007, we have appointed Dibena Enterprise Sdn Bhd (Dibena) as our strategic partner for the IP Core Project and Next Generation Network and have undertaken to give Dibena full support and backing to make the above projects a great success. We also have assured Dibena of technology transfer and local staff support to assist Dibena in its future growth, both in Malaysia and overseas.

Should the above projects be awarded to Huawei, Dibena shall be entitled to a fee of five percent (5%) of the total equipment contract sum based on the following twins and conditions:-

1. Payment shall be made progressively on a pro-ration of the purchase orders received by Huawei from TM over the total value of the equipment purchase orders received by Huawei from TM over the total value of the equipment contract awarded to Huawei or such modifications thereof, and not on the issuance of the LOA by TM.
2. The fee of each purchase order shall be paid upon collection by Huawei of the proceeds of the purchase order from TM.

We understand that Dibena has in turn appointed several other parties as consultants and advisors to secure the above-mentioned project on similar terms as mentioned above. Huawei undertakes to effect payment promptly to Dibena based on the above-mentioned terms, in order for Dibena to meet all its obligations in so far as this project is concerned.

For all EOT and other ancillary work that Huawei does not wish to undertake, Dibena shall be given the first right of refusal.

Should you agree with the terms and conditions stated above, please sign the attached copy and return it to us ...

[15] I have underscored the critical parts of these "Undertaking Letters" above. Given the terms employed, if these letters are genuine, and if Chang Jijun had the authority to sign them as "Deputy Country manager", they will go a long way to support Dibena's contention that there was a partnership agreement between Dibena and Huawei Malaysia.

Summary Of Dibena's Positon

[16] Dibena submits that its case "is fairly simple but made complicated by issues raised by the first defendant", and summarises its case in its written submission thus:

The Plaintiffs case can be summarised as follows:

(i) A partnership exist between the Plaintiff and 1st Defendant by virtue of:

(a) 1st Defendant's letters to the Plaintiff dated 3.8.2007 and 12.2.2008 in respect of the TM Next Generation Network (NGN) Project. There are 3 other similar letters issued by the

A 1st Defendant to the Datasonic dated 3.8.2007, to the Plaintiff dated 29.10.2007, to the Plaintiff dated 30.11.2007 and to the Plaintiff dated 12.2.2008 (collectively referred to as the "Partnership Letters";

(b) The conduct of the 1st Defendant together with the conduct of the Plaintiff themselves.

B

(ii) The Plaintiff has fulfilled its obligations under the partnership with the 1st Defendant and therefore the 1st Defendant is to share the income it derived with the Plaintiff in accordance with the terms of the Partnership.

C **[17]** In arguing its case, Dibena maintains that it was approached by Huawei Malaysia sometime in late 2006 or early 2007 through Chang Jijun and it was later introduced to the other employees of Huawei Malaysia. The background to the formation of the alleged partnership agreement is explained in Dibena's written submission as follows:

D The 1st Defendant did not have a good reputation in the industry or market in Malaysia during that material time and sought the Plaintiffs help to obtain new business through Projects specifically in the area of telecommunication.

The Plaintiff, on the other hand, had a stable and thriving business in E Malaysia and enjoyed a good reputation in the market. The Plaintiff was also a bumiputra company and was therefore in a better position to obtain business compared to the 1st Defendant. Though the 1st Defendant is a company incorporated in Malaysia it had foreign ownership and was not a bumiputra company.

F The Plaintiff, through Dato' Abu Hanifah bin Noordin, agreed to work with the 1st Defendant on the condition that a partnership is formed where the Plaintiff would share the income obtained by the 1st Defendant if the Plaintiff is able to secure new businesses for the 1st Defendant. One such business during that material time in 2007 was in the form of TM telecommunications Projects which yet to be launched.

G This agreement to partner or team up with the 1st Defendant lead to the issuance of the Letters of Undertaking which set out the general terms of the partnership.

The Plaintiff used its knowledge, experience, reputation in the market to not only obtain more information about the TM Projects but also to lobby H for them.

Through the Plaintiff's efforts the 1st Defendant was awarded several Projects by the 2nd Defendant (TM) and a major part known as the TM Next Generation Network (TM NGN-NE Systems) Project ("TM Project") which is broken to 4 major parts known as Establish - (Supply I of Equipment), Establish (Services), Operate (Services) and Transfer (Services).

> Initially the 2nd Defendant issued the 1st Defendant a Letter of intent dated 14.5.2008 which was later followed by a Letter of Award dated 4.9.2008. Having been awarded the TM NGN-NE Project the 1st Defendant now denies the existence of a partnership with the Plaintiff and refuses to share its income derived from the TM Project.

[18] Running through the plaintiffs arguments is the proposition that Huawei Malaysia's reputation was bad compared to Dibena's, and Dibena was a Bumiputra company with not only a good reputation but a thriving business in Malaysia as well. And Huawei Malaysia needed Dibena to secure the TM projects, in return for which a partnership was to be formed between them for a sharing of the income derived from the projects. It is argued that Dibena lobbied for Huawei Malaysia and the latter was awarded the projects, inclusive of the NGN Project. As noted earlier, Dibena argues:

> The Plaintiff used its knowledge, experience, reputation in the market to not only obtain more information about the TM Projects but also to lobby for them. Through the Plaintiff's efforts the 1st Defendant was awarded several Projects 2nd Defendant (TM) and a major part known as the TM Next Generation Network (TM NGN-NE Systems) Project ("TM Project") which is broken to 4 major parts known as Establish - (Supply of Equipment), Establish (Services), Operate (Services) and Transfer (Services).

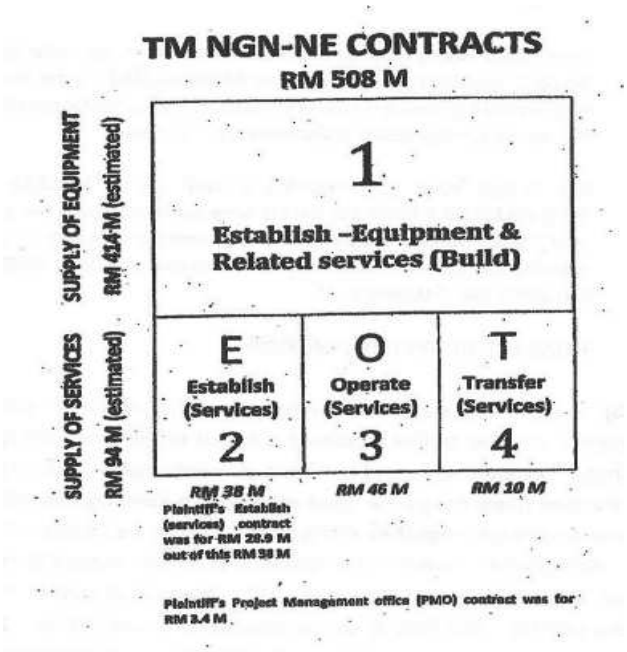
[19] Chew Ben Ben (PW2), a consultant with Dibena, describes the role performed by Dibena as one of "sanitising" Huawei's reputation. I reproduce the relevant excerpt from this witness' cross-examination below.

> Q: The 5% fee, what kind of consultancy the Plaintiff provided to the Defendant? Was it a professional telecommunication advice, consultancy services?
>
> PW2: No, more on marketing and err sanitise on Huawei's reputation in TM ...
>
> COURT: Consultancy and sanitise?
>
> PW2: Ya. Their bad reputation and track record in TM and in the industry. That is the market reputation of Huawei.

[20] The bad track record of Huawei Malaysia in this country has also been stressed by Dato' Abu Hanifah bin Noordin (PW1) in his evidence.

The Different Components Of TM-NGN-NE Contracts

[21] To set the claim in context, this is not a case where Dibena has not at all been paid for any or all of the services the company has performed for Huawei Malaysia as its sub-contractor in respect of the NGN Project. As argued by Dibena, it is claiming its share of 5% of the "Establish-Supply of Equipment" portion. In the course of the trial, PW1 produced a tabular breakdown of the different components (exh. P-20). I reproduce it below.



[22] The nature of this claim has prompted counsel for Huawei Malaysia to state vigorously in his closing, additional reply submissions that Dibena is "driven by greed". This is how counsel has addressed the issue:

> The plaintiff having received the sum of RM3,446,500.00 under the PMO Services Agreement and another further RM28,961,199.51 under the Master Procurement Agreement is driven by greed to demand, ask for more from the 1st Defendant on the pretext of 5% partnership commission.
>
> The Plaintiff have been awarded a total job of RM32,407,699.51 (RM3,448,500.00 + RM28,981,199.51) being not satisfied and being greedy want to take advantage of the situation to forge letters of undertaking to demand the additional 5% which could end up with another potentially RM30-RM35 Million from the 1st Defendant ...

Huawei Malaysia's Position

[23] Huawei Malaysia has presented a layered approach to its defence. Nevertheless, the central argument is based on an averment that the letters of undertaking signed by Chang Jijun are forged documents. This is the area where the parties have engaged in a keen contest, with each presenting its own expert evidence on handwriting. As I indicated earlier, Huawei Malaysia has in fact adduced four handwriting experts to establish that these letters were in fact not signed by Chang Jijun. I will explore this area presently, but first, it will be opportune to analyse how Huawei Malaysia's defence is premised, and for this purpose I quote its summary of defence from the written submission of counsel:

(a) The purported undertaking dated 12th February 2008 ... has been forged whereby the 1st defendant's five expert document examiners' reports have been filed in to this court and out of which four of them had attended the trial to give evidence.

(b) If the said undertaking was found not to be a forged document by this Honourable court, the said undertaking was issued without authority, mandate, company resolution of the first defendant and/or as a result of inducement, bribery by the plaintiff.

(c) If the said undertaking was found not to be a forged document by this Honourable Court, the said undertaking does not constitute a partnership between the plaintiff and the 1st defendant under the common law and/or the partnership act 1961.

(d) If the said undertaking was found not to be a forged document by this Honourable Court;

(i) The terms of the said undertaking are qualified, ambiguous, uncertain, incomplete and merely an "Invitation to treat" or mere negotiation.

(ii) The terms of the said undertaking will not fulfilled by the plaintiff and are incapable of being fulfilled, performed by the 1st defendant.

(e) If the said undertaking was found not to be a forged document by this Honourable Court, the said undertaking is not binding on the 1st defendant because the said NGN project was procured by the 1st defendant based on their own merits without the assistance from the plaintiff.

(f) If the said undertaking was found not to be a forged document by this Honourable Court, the said undertaking has been superseded by clause 43.1 and 50.6 of the Master Procurement Agreement for services dated 31st January 2011 and thus no longer valid and enforceable.

(g) As a result of this suit, the 1st defendant has suffered loss of reputation making it more difficult, expensive for the 1st defendant to appoint their subcontractor and is claiming a loss of damages for RM 30 million.

[24] These grounds can be more simply analysed as three main issues, namely:

(a) whether the letters of undertakings are forged (in which event a positive answer will determine the outcome of the plaintiff's claim, ie, its dismissal);

(b) whether, if the letters of undertaking are not forged, Chang Jijun had the authority from Huawei, or must be deemed to have had the authority, to sign them (if the answer is that he did not have the authority, whether in the circumstances Huawei Malaysia could still be deemed bound by these letters);

(c) following from issue (b), if Chang Jijun had the authority; actual or ostensible, whether these letters are in the nature of a partnership agreement, or simply as a commission agreement (which is unpleaded).

I now address the issue of forgery of the letters of undertaking.

Forgery Of The Letters Of Undertaking And Handwriting Experts' Evidence

[25] The direct evidence on the signing of these letters is unsatisfactory. Chang Jijun cannot be traced, despite efforts being made by Huawei Malaysia to locate him in China. He has simply disappeared from the scene. Chew Ben Ben (PW2) states quite vehemently that he was present when these letters were signed, and, according to this witness, at least for one of the letters, PW1 was present with him when Chang Jijun signed the letter. PW1, however, denied this, which makes, Chew Ben Ben's evidence unreliable and contradictory.

[26] These documents were not the only documents executed by Chang Jijun as "Deputy Country Manager". He also executed four loan agreements (respectively dated 14 February 2008, 17 March 2008, 21 March 2008 and 8 April 2008) in that capacity by which Dibena loaned a total sum of RM1 million to him in his personal capacity. These loan agreements appear collectively as exh. P-5. All are properly attested and witnessed. These documents are accepted as genuine documents, and indeed are the "sample documents" used by the handwriting experts when assessing whether the signatures allegedly of Chang Jijun in the letters of undertaking have been forged.

[27] Huawei Malaysia has argued the existence of these personal loans to Chang Jijun shows bribery and inducement by Dibena to procure the letters of undertaking from Chang Jijun, if these were not forged. Sua Chek Hoong (DW1), the present Country Manager for Huawei Malaysia, has this to say in his examination-in-chief:

> Q: Is it a norm for any employee of the Defendant to enter into any friendly loan agreements with outsiders?
>
> A: No, it is never the norm. In fact, it is a prohibited practice. We abide by strict business ethics and practice. Any of the 1st Defendant's employees are under no circumstances to benefit or to receive any promise, gift, payment, loan, reward, inducement, benefit, or other advantage to be offered, promised or made by any outsiders who will gain certain benefit from the 1st Defendant. Mr. Chang Jijun should know better strongly believe the issuance of the letters were suspicious and linked to the friendly loan agreement. Even under the Master Procurement Agreement for services entered into between the Plaintiff and the 1st Defendant on 31.1.2011, clause 49 therefore prohibited the Plaintiff from offering any type of benefits to any of the 1st Defendant's employees.

[28] As for handwriting experts' opinion, Dibena, as stated earlier, called one expert, Mr. Harcharan Singh Tara (PW5). According to this witness, the five "questioned signatures" are "most probably having a common authorship" to the "standards" since, in his opinion they are all "written uniquely, fluently, with no evidence of tremor or hesitation in the quality of the lines".

[29] The "questioned signatures"/ challenged signatures of Chang Jijun includes the earlier mentioned letters of undertakings of 3 August 2007 (Q1) and 12 February 2008 (Q2) written to Dibena together with letters dated 29 October 2007 (to Dibena) (Q3), 3 August 2007 (to Datasonic Corporation Sdn Bhd) (Q4) and 30 November 2007 (to Dibena) (Q6). The "standards"/ the "specimen signatures"/the acknowledged genuine signatures of Chang Jijun (S1, S2, S3 and 54) are taken from the signature pages of the four loan agreements executed by Chang Jijun.

[30] Huawei Malaysia's four handwriting experts have offered a differing opinion and are critical of PW5's opinion, since he has no knowledge of the Chinese language and the Chinese script. All four experts have stated in effect the questioned signatures have been most probably forged, although employing different terms individually. Suffice for me to state the summary given by each:

(a) Wong Kong Yong (DW3):

> ... I am of the opinion that the questioned signatures show differences in handwriting characteristics from the specimen signatures. Hence, I am of the opinion that the questioned signatures may not have been written by the writer of the specimen signatures ...

(b) Lim Yok Chaw (DW4):

> I found the disputed signatures to show fundamental, significant and consistent differences in handwriting characteristics from the specimen signatures ...
>
> Hence I am of the opinion that the disputed signatures are most probably of different authorship from the specimen signatures ...
>
> ... I found the stamped impression of "Huawei Technologies (Malaysia) Sdn Bhd" to be above the stamped impression of "Dibena Enterprise Sdn Bhd" on the disputed document "Q1" ... I am therefore of the opinion that the disputed document "Ql" is most probably not a genuine document ...

(c) Leung Sze Leung (DW5):

> Whilst the undisputed signatures of. Mr. Chang Jijun were fluently written, featuring good line quality, vigour and spontaneity, the questioned signatures in Q1, Q2, Q4 and Q5 exhibit poor line

quality, hiatus, hesitation, suspicious patching and tremor. They do not demonstrate any fluency, carefree manner and abandonment which are characteristically found in the known genuine signatures ...

I am therefore of the opinion that the questioned signatures in Ql, Q2, Q4 and Q5 were not written by Mr. Chang Jijun ...

Deficiency in respect of line quality and features such as hiatus, retouching and tremor was not depicted in the Questioned signature Q6 which exhibits only a few discrepancies from the control specimens. I therefore opine that Q6 may not have been written by Mr. Chang Jijun

(d) William Pang Chan Kok (DW6):

I was able to reach a formal conclusion that there is strong support that the writer of the Chang Jijun signatures on the specimen documents referred to in items SI to S4 did not write the Chang Jijun signatures on the questioned signatures referred to as items Q1A, Q4A, Q5A and Q6A ...

I was not able to reach a formal conclusion whether the writer of the Chang Jijun signatures on the specimen documents, referred to in items S1 to S4, wrote the questioned signature Q2A ...

[31] Counsel for Dibena has demonstrated to this court how the copies of the disputed and specimen signatures had been taken from the government chemist (DW3) surreptitiously and without their knowledge, and therefore, it is argued, there is a break in the chain of evidence whereby the veracity of the documents actually submitted to DW4, DW5 and DW6 has to be called in question. Whereas in a criminal prosecution, this break in the chain of evidence will defeat the prosecution's case, it is equally important to bear in mind that presently we are dealing with a civil case where the burden cast is obviously not on the standard of proof beyond reasonable doubt. I have considered in detail the reports of the four expert witnesses for Huawei Malaysia, and am satisfied that they were provided the same questioned signatures and the same specimen signatures as PW5. On this I am deciding purely on the questions of relevancy and weight of the evidence.

[32] Nevertheless, it has to be placed on record that what was done behind the backs of solicitors for Dibena is not something that should have happened. I can find no justification for this sort of conduct amongst the litigants and their solicitors.

[33] On the issue of their expertise, I must state categorically that I find the academic and practical qualifications of all these witnesses impressive. This court has had the pleasure and privilege of listening to experts on handwriting in this region (Malaysia, Hong Kong and Singapore), but I quite agree with Huawei's argument that when it comes to giving expert evidence on the Chinese script, the witness must know the Chinese language and the Chinese

script. Otherwise, there will be a risk of major error in evaluating the challenged as against the specimen signatures. DW4 explains this matter clearly, and I quote:

> ... He is handicapped with the inability to fully appreciate the significance of characteristics such as the structure and formation of the Chinese characters and the writing movements associated with the signing of such signature. He is also handicapped by the inability to interpret the minutiae of subtle writing characteristics present in Chinese signatures.
>
> Akin to a lay person in handwriting identification, he has based his finding of ... common authorship mainly on pictorial similarities ...

[34] Dibena's counsel has also referred me to the persuasive decision of the Hong Kong Court of Final Appeal in *Nina Kung v. Wong Din Shin* [2005] 8 HKCFAR 387, where the court observed:

> As a general proposition ... the principles of examination and comparison are similar and the psychological factors underlying a forgery are the same for all languages. However, since different languages have different characteristics, when applying these principles to Chinese handwriting, particular attention must be paid to these characteristics. Knowledge of the language in which the alleged forgery is written is a clear advantage. It would not be easy for someone who does know the language to look for the relevant characteristics in the handwriting in order to perform an effective examination and comparison ...

The Hong Kong Court further said that an opinion by a handwriting expert who does not know the Chinese language when examining signatures in the Chinese script needs to be considered with caution.

[35] In these circumstances, I find that the opinion of PW5 should not be considered as accurate. That said, it remains for me to determine whether I should then accept the opinions of Huawei's experts since they all know the Chinese language.

[36] Learned commentaries and case authorities are agreed that handwriting examination and evidence is not an exact science, unlike fingerprint evidence. The role of the hand writing expert is merely to assist the court; the court is the final judge on this matter. The Supreme Court in *United Asian Bank Bhd v. Tai Soon Heng Construction Sdn Bhd* [1993] 2 CLJ 31; [1993] 1 MLJ 182, when alluding to this question, said "[the] issue whether a signature on a document has been forged is a question of fact" and that "it is eminently a matter for the trial court to determine after considering the credibility of witnesses ... and taking into account expert evidence". A trial judge "is not entitled to abdicate his function by allowing an expert to determine the question". See also *Dr Shanmuganathan v. Periasamy Sithambaram Pillai* [1997] 2 CLJ 153; [1997] 3 MLJ 61:

> ... the principal object of expert evidence is to assist the court to form its own opinion. An expert should give his reasons. The court is the final arbiter, not the experts or witnesses ... The learned Judge should have

A considered the reasoning given by the expert and with that assistance arrive at the conclusion. In falling to do so the learned Judge had abdicated his function. The learned Judge is entitled to reject the evidence but not before considering such evidence ...

[37] In *PB Malaysia Sdn Bhd v. Samudra (M) Sdn Bhd* [2008] 1 LNS 679; B [2009] 7 MLJ 681, the High Court said: "the court may not reject unopposed expert evidence unless the evidence is "obviously lacking in defensibility", applying the principles laid down in two Singapore Court of Appeal decisions, namely *Saeng-Un Udom v. PP* [2001] 3 SLR 1, and *Dr Lo Sook Ling Adela v. Au Mei Yin Chistina & Anor* [2002] 1 SLR 408. In the latter case, C Chao Hick Tin JA held:

In law, while a judge is not obliged to accept the opinion of an expert, even in a situation where there is no contrary expert evidence, such rejection must be based on sound grounds ...

[38] Recently, I had occasion to adopt these principles sitting in the Court D of Appeal in the case of *Majuikan Sdn Bhd v. Barclays Bank Plc* [2014] 9 CLJ 337 where speaking for the unanimous court, I said:

We are in agreement with these principles and in our view, a Judge who is not an expert himself, should defer to expert opinion unless that evidence is obviously indefensible and is not supported by the basic facts E of the case. Where there are conflicting expert opinions, the Judge is of course entitled to bring to bear his own judicial appreciation of the matter, and choose one over the other, but where there is only one expert opinion, he should not as a rule reject that opinion outright without judiciously considering whether it is obviously indefensible and unsupported by the basic facts of the case.

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[39] Appreciating that recognition of handwriting to determine forgery is not an exact science, and of course also mindful that on the facts of this case, we have four expert witnesses who have tended to support the allegation of forgery but have in fact provided varying opinions in support thereof, there is a need to include in the equation an appreciation of the basic facts of the G case to determine whether I should agree with the opinions suggesting the probability of forgery of the letters of undertaking. No expert for Huawei Malaysia, despite prompting, has been willing to state with greater certainty beyond their guarded assessment of the evidence which tantamount ultimately to their personal, professional assessment of where the probabilities lie. As H I underscored earlier, Chang Jijun cannot be traced. Chew Ben Ben (PW2) swears he saw Chang Jijun signing the letters although he was obviously mistaken when he said PW1 saw Chang Jijun signing the letters of undertaking as well. If the evidence of Chew Ben Ben is completely dismissed as untruthful, the natural inference on the evidence will be that I Chew Ben Ben had a hand in the alleged forgery of these letters. This of course is not part of the pleaded case of Huawei Malaysia, which has merely pleaded the issue of forgery in very general terms. Even Huawei Malaysia cannot be sure. Hence, the reason why until today no police report has been

lodged by Huawei Malaysia on the alleged forgery. We are also considering not one but five allegedly forged signatures. Putting it in simple and direct terms, why would Dibena, through Chew Ben Ben or whoever, run the risk of forging five documents to claim the 5% commission and yet ensure that the loan agreements were properly done and executed by Chang Jijun also in his alleged capacity as "Deputy Country Manager"? In the total circumstances and on these basic facts, I tend to be of the view that the probabilities are against a finding that the questioned signature were forged. I find therefore on the basic facts that the probabilities are Chang Jijun himself signed these letters and then simply absconded, for reasons best known to him and him alone.

The important issue then becomes whether having signed the letters of undertaking as "Deputy Country Manager" when in fact he was not, Chang Jijun thereby bound Huawei Malaysia to pay the 5% commission on the terms of the letters of undertaking.

The Issue Of Absence Of Authority And The Indoor Management Rule

[40] On the evidence, Chang Jijun was clearly only a Technical Branding Advisor, despite the position held out in his calling card that he apparently gave to PW1. PW1 says in his evidence the then Country Manager, Richard Zhang Sheng Xing (DW2) had represented to him Chang Jijun as his deputy. DW2 has denied this allegation vehemently. DW2 goes further to say Chang Jijun's role in the NGN project was not significant and his duty was only to "shortlist and choose the local partner from Malaysia who has the technical capability to be the NGN sub-contractor". DW2 raises a valid point when he says further he had at that time three Deputy Country Managers - Dai Jing Yue (DW7), Li Feng and Sua Chek Hong (DW1). DW2 posed this point, when cross-examined:

> ... he was only the Technical Branding Advisor as per his employment pass, a position that is more inferior than the Deputy Country Manager. Even if I was ill and could not discharge my duty as Country Manager, which I deny, I still have my three deputies to assist me. Why would I want to have someone of inferior position to be the "Acting Country Manager?"

[41] Unlike the evidence of DW2, which is supported by DW1 and DW7, PW1 and PW2, when confronted with the hard evidence that in his employment pass Chang Jijun is denoted as a "Technical Branding Advisor", have been surprisingly and flippantly dismissive of this hard documentary evidence. See the following responses from these two witnesses in the notes of proceedings:

> PW1: I can bring his mother-in-law as a Technical Branding Advisor. No problem. It is just a term we use when we want to qualify for a work permit ... so, this is not a significant finding ...

> PW2: I pity you Huawei, I pity you. He ... comes as deputy country manager and still want to deny it? He uses the visa. Visa can be used for anything. I can call myself consultant or anything, but the fact that you have been appointed as deputy country manager, you are the deputy country manager. You don't have the guts to accept it. I feel malu for billion dollar company. Huawei! Small wind depends on wisdom. Deep wind depends on interval. Where is the integrity? Too much! I feel malu if I were you. I won't stand as a lawyer for them. Malu! Really, malu!

[42] With respect, witnesses for a party in a litigation in a court of law must realise the court deals with evidence, not vitriol. The sooner this is appreciated the better for the contesting litigant. In assessing demeanour, as against the contemporaneous documentary evidence, veracity of evidence can be easily destroyed by vitriolic outbursts of the witness.

[43] Thus, as between Dibena's witnesses and Huawei Malaysia's witnesses, I find the latter more reliable and their evidence, in the circumstances, truthful. To be charitable, Dibena's witnesses were most probably duped by Chang Jijun into believing he was the "Deputy Country Manager". If so, this was a fraudulent misrepresentation by Chang Jijun, a cheating by an unreliable employee who now has made himself scarce. The overall evidence does not show a representation by DW2 that Chang Jijun was authorised to decide on the commission of 5% to be paid on the terms laid out in the letters of undertaking. There is therefore no issue of ostensible or apparent authority, let alone actual authority. In these circumstances, it is no answer for Dibena to rely on the rule on indoor management - *Turquand*'s rule that an outsider dealing with a company is not expected to be aware of the internal rules and operations of the company. This general rule of company law does not operate where an illegality is perpetrated by a representative of the company, or in the absence of any representation as to authority. The case of *Freeman and Lockyer (a firm) v. Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 has been cited by counsel for Huawei Malaysia before me. I fully agree the principles therein as adopted by our own Federal Court in *Chew Hock San & Ors v. Connaught Housing Development Sdn Bhd & Another Case* [1985] 1 CLJ 533; [1985] CLJ (Rep) 64; [1985] 1 MLJ 350, apply on the facts of this present case. I quote the relevant principles as adopted in *Chew Hock San & Ors*, *supra*, below:

> The legal position of a company or a corporation is that being a fictitious person it can only do any act which includes making a representation through its agents or servants. The capacity of such a company is limited by its memorandum and articles of association. In other words, it can act within the ambit of the powers or provisions expressly provided in the memorandum and articles of association. In the ordinary course of business, a third party when entering into a contract with a company normally relies on the authority of an agent of the company.

Now, the difference between an actual and an apparent or ostensible authority and the principles applicable thereto are adequately explained by Diplock LJ in *Freeman & Lockyer v. Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480, 502-504 from page 502 to page 504 as follows:

> It is necessary at the outset to distinguish between an "actual" authority of an agent on the one hand, and an "apparent" or "ostensible" authority on the other. Actual authority and apparent authority am quite independent of one another. Generally they co-exist and coincide, but either may exist without the other and their respective scopes may be different. As I shall endeavour to show, it is upon the apparent authority of the agent that the contractor normally relies in the ordinary course of business when entering into contracts.
>
> An "actual" authority is a legal relationship between principal and agent created by a consensual agreement to which they alone are parties. Its scope is to be ascertained by applying ordinary principles of construction of contracts, including any proper implications from the express words used, the usages of the trade, or the course of business between the parties. To this agreement the contractor is a stranger; he may be totally ignorant of the existence of any authority on the part of the agent. Nevertheless, if the agent does enter into a contract pursuant to the "actual" authority, it does create contractual rights and liabilities between the principal and the contractor ...
>
> An "apparent" or "ostensible" authority, on the other hand, is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be end in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the "apparent" authority, so as to render the principal liable to perform any obligations imposed upon him by such contract. To the relationship so created the agent is a stranger. He need not be (although he generally is) aware of the existence of the representation but he must not purport to make the agreement as principal himself. The representation, when acted upon by the contractor by entering into a contract with the agent, operates as en estoppel, preventing the principal from asserting that he is not bound by the contract. It is irrelevant whether the agent had actual authority to enter into the contract.
>
> In ordinary business dealings the contractor at the time of entering Into the contract can In the nature of things hardly ever rely on the "actual" authority of the agent. His information as to the authority must be derived either from the principal or from the agent or from both, for they alone know what the agent's actual authority is. All that the contractor can know is what they tell him, which may or may not be true. In the ultimate analysis he relies

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> either upon the representation of the principal, that is, apparent authority, or upon the representation of the agent, (hat is, warranty of authority.
>
> In *Clay Hill Brick & Tile Co Ltd v. Rawlings* [1938] 4 All ER 100, a company was held bound by the act of its chairman who acted as managing director
B though never appointed as such, in receiving cheques from a customer in payment for goods supplied by the company. Similarly, in *Freeman*'s case, the act of K, one of the directors of the company in appointing the plaintiff, a firm of architects, to apply for planning permission to develop the estate belonging to the company was within the authority of a managing director of the company: although no such managing director
C was appointed, the articles of association contained such power to appoint him as such, in contrast is the case of *British Bank of the Middle East* (*supra*). There letters of undertaking issued by a branch manager, a junior employee of the respondent insurance company to the Bank were held not to be binding on the insurance company on the ground, *inter alia*, that the branch manager had no authority, express or implied, to execute the
D undertakings on, behalf of the company. It was not a case of the company holding out the branch manager as having its authority, express or implied, to answer the letter in the way he did but rather the case where he, without the knowledge or permission of the insurance company, held himself out as having such authority. In the case before us, the person alleged to be purporting to act for the respondent was a general clerk and
E according to the evidence of DW2 the manager, as accepted by the learned Judge. DW1 had no authority to accept booking fees nor to issue receipts on behalf of the respondent. DW1's service was terminated by the respondent sometime in September 1980. (emphasis added)

[44] Chang Jijun is in the same position as the branch manager in the *British*
F *Bank of the Middle East* case cited in the judgment of the Federal Court and the clerk on the facts of *Chew Hock San & Ors*, *supra*.

[45] On the evidence and on the applicable law, I therefore find that the two letters of undertaking were signed by Chang Jijun without authority and unlawfully, and thus Huawei Malaysia cannot be bound by the terms in these
G letters of undertaking.

[46] On this ground alone, the claim by Dibena must stand dismissed.

Whether Partnership Exists Independently Of The Letters Of Undertaking

H **[47]** Given my findings on the absence of authority and the non-applicability of the general *Turquand*'s rule on the facts, it is strictly unnecessary to consider whether there was a partnership created independently of the letters of undertaking. Any assertion that there was a partnership in law and on the facts must fail on the evidence presented by Dibena. If at all there was any commercial relationship, it would be strictly
I a contractor and sub-contractor relationship. It would be a commission agreement, but this ground has not been pleaded in any event. And on the

facts of this case, principle, procedure and practice will militate against the exercise of the court's discretion to allow an unpleaded ground just because it has been raised in the course of the trial and both parties have submitted on it. It will mean to allow Dibena to change the goal post when Huawei Malaysia is within striking distance of scoring a win.

[48] In the premises I have elaborated above, and for the reasons I have mentioned, I am dismissing the plaintiff's claim with costs.

The Counterclaim

[49] Huawei Malaysia has a counterclaim for RM30 million damages, but this counterclaim appears to be more tactical than a serious effort on its part. Absolutely no evidence has been tendered to prove the damage and the quantum of damages allegedly suffered by Huawei Malaysia, beyond mere assertions. Therefore, the counterclaim also stands dismissed.

Suit D-22NCC-72-2011 (The Datasonic Suit Against Huawei Malaysia)

[50] By a ruling of this court, suit D-22NCC-72-2011 has been consolidated with the present suit and the outcome of this present suit is to be binding on D-22NCC-72-2011. Consequently, the plaintiffs claim in D-22NCC-72-2011 and the defendant's counterclaim in that same suit also stand dismissed.

[51] Orders and costs:

(a) For Suit No. D-22NCC-71-2011, (i) the plaintiff's claim against the first defendant is dismissed and (ii) the first defendant's counterclaim is dismissed.

(b) For Suit No. D-22NCC-72-2011, (i) the plaintiff's claim against the defendant is dismissed, and (b) the defendant's counterclaim is dismissed.

(c) Costs of RM120,000 for Suit D-22NCC-71-2011 is ordered to be paid by the plaintiff to the first defendant, and costs of RM50,000 is ordered to be paid by the plaintiff to the second defendant in Suit D-22NCC-71-2011.

(d) Costs of RM50,000 for Suit D-22NCC-72-2011 is ordered to be paid by the plaintiff to the defendant.

(e) Costs of RM20,000 each is ordered for the dismissal of the counterclaims in Suit No. D-22NCC-71-2011 and Suit No. D-22NCC-72-2011 to be paid by the first defendant and the defendant respectively.